

Senate Joint Resolution 19 – Page 2

governor. The 2001 state-tribal gaming compact NTPs whose current compact expires on June 30, 2015 and who have agreed to the 2015 compact are the Pueblo of Acoma, Mescalero Apache Tribe, Jicarilla Apache Tribe, and Navajo Nation. Jemez Pueblo also agreed to the 2015 compact but does not currently operate a gaming facility. Pojoaque Pueblo, a 2001 compact tribe, has not agreed to the 2015 compact and is seeking to negotiate an agreement with the federal government instead.

The 2015 compact is based on the 2007 state-tribal compact language and structure, with new, omitted, or refined provisions. Specifically, the 2015 compact:

- Changes the revenue sharing percentage. (Figure 6)
- Prohibits class III gaming on lands that are eligible for gaming but were acquired after October 17, 1988. If, in the future, a tribe desires to conduct class III gaming on such lands they must negotiate a separate compact with the state.
- States that free play and point play do not increase net win and amounts paid as a result of free play or point play reduce net win for purposes of the revenue sharing calculation.
- Changes the number of allowable gaming facilities per NTP to two gaming facilities or three gaming facilities if the tribe has at least 75,000 tribal members residing in the state. Also, NTPs are permitted to operate an additional “legacy gaming facility” with 130 class III gaming devices if such a facility is operational before June 30, 2015.
- Authorizes gaming facilities to be open 24 hours a day.
- Allows NTPs to extend short-term credit no less than \$10 thousand to certain qualified patrons.
- Permits NTPs to offer alcohol as a complimentary benefit but not within the gaming facility.
- NTPs may provide discretionary complimentary to patrons, provided that the cumulative market value of “comps” provided does not exceed three percent of the NTPs annual adjusted net win.
- Excludes the State Treasurer from receiving financial statements and audit reports from gaming enterprises on an annual basis.
- Increases access to data and reporting from NTPs to the State Gaming Representative or an appropriate designee of the State Gaming Control Board.
- Creates a self-exclusion program which allows problem gamblers to voluntarily exclude themselves from gaming facilities.
- Reduces the amount of regulatory fees paid to the state for NTPs with adjusted net win less than \$80 million and increases the amount for NTPs with adjusted net win greater than \$80 million.
- In the event that internet gaming is authorized within the state, provides that the state and NTPs agree to reopen good faith negotiations to evaluate the impact and consider adjustments to the compact.

FISCAL IMPLICATIONS

The estimated fiscal impact of the 2015 compact is compared with the February 2015 consensus revenue estimates for tribal revenue sharing receipts. The February 2015 consensus estimate does not include revenue sharing from the five NTPs whose 2001 compact expires after FY15, resulting in a reduction of approximately \$20 million.

Compared to the February 2015 consensus estimate, the 2015 compact is projected to increase

Senate Joint Resolution 19 – Page 3

revenue to the state, by approximately \$10.4 million in FY16 and increasing to \$16.3 million in FY19. The estimate for total tribal revenue sharing revenue to the general fund is as follows.

However, considering actual full-year FY14 net win would reduce the marginal general fund revenue, as net win in FY14 was lower than initially anticipated. Due to this reduction the FY16 revenue impact shown in the revenue table on page one is reduced to \$10 million.

	FY15	FY16	FY17	FY18	FY19
February 2015 Consensus	\$70,000,000	\$53,300,000	\$56,200,000	\$58,400,000	\$60,500,000
Proposed 2015 Compact (LFC est.)	\$70,000,000	\$63,300,000	\$65,600,000	\$68,100,000	\$76,800,000
Difference	\$0	\$10,000,000	\$9,400,000	\$9,700,000	\$16,300,000

This impact reflects additional revenue sharing from four NTPs whose current compacts with the state expires on June 30, 2015, reflects a change in calculation of adjusted net win, and changes the revenue sharing percentages. Pojoaque Pueblo, which has not agreed to the 2015 compact, is excluded in the fiscal impact.

The LFC staff estimate assumes all NTPs whose 2001 compact expires after FY15 except Pojoaque will sign the proposed 2015 gaming compact. The estimate also assumes all NTPs currently party to the 2007 compact will sign onto the 2015 compact as it includes better operating terms than the 2007 compact for casinos, such as, a lower revenue sharing rate for FY16, FY17, and FY18; 24-hour gaming; the extension of credit of \$10 thousand or more for certain gamblers; and increased “comps” for gamblers.

Currently, all but two tribes that offer free play do not include free play in their calculation of net win. The Gaming Control Board estimates the impact of these two tribes not including free play will reduce aggregate adjusted net win by \$3 to \$5 million. As such, this estimate reduces adjusted net win by \$5 million.

The LFC staff estimate does not include adjustments for the opening of additional gaming facilities permitted under the terms of the compact. It is assumed that the statewide level of net win will not increase significantly with the opening of more casinos; overall net win at New Mexico tribal casinos between FY12 and FY14 has decreased, signaling saturation in the marketplace. The estimate also does not include any assumptions for changes in net win resulting from cannibalization of business from racinos or from other games of chance, such as the lottery. (Figure 1)

DFA provided an estimate of the general fund impact of the proposed compact. Because the terms of this compact are more generous than the 2007 compact, the DFA revenue impact assumes all tribes excluding Pojoaque sign onto the new compact. If only those tribes explicitly noted in the bill sign onto this 2015 compact, the expected revenue to the general fund would be about \$15.5 million each year in FY16-FY18 and \$17.5 million in FY19. Both estimates assume Pojoaque does not sign onto the new compact. If Pojoaque were to sign, the analysis assumes an additional \$6 million in annual General Fund revenue in either case.

DFA reports its estimate does not account for any revenue changes as a result of the Laguna and Ohkay Owingeh pueblos deducting free play. The other parties to the 2001 compact already deduct free play from net win. According to the Gaming Control Board, the impact on net win of

this deduction is approximately \$4 million, which would reduce General Fund revenue by approximately \$370 thousand.

DFA Estimated Revenue Impact – 2015 Compact			
	FY15	FY16	FY17
All NTPs Sign	\$0	\$10,000,000	\$9,000,000

TRD has also provided an estimate of the general fund revenue impact of the proposed 2015 compact. If the five NTPs listed in the bill sign the new compact the general fund gain to the state will range from \$15 million in FY16 to \$17 million in FY19. The analysis also estimates the general fund impact given the possibility that all of the NTPs with the exception of Pojoaque, will sign into the new compact. From FY16 to FY18 the NTPs not listed in the bill who are part of the 2007 compact will reduce their revenue sharing by signing onto the new compact. By FY19 their revenue sharing is equivalent to the existing 2007 compact. If all NTPs, including the five listed in the bill, sign onto the new compact, then the general fund gain to the state will be \$10 million from FY16 to FY18 and \$17 million in FY19.

TRD Estimated Revenue Impact - 2015 Compact				
FY15	FY16	FY17	FY18	FY19
\$0	\$10,000,000 - \$15,000,000	\$9,000,000 - \$15,000,000	\$10,000,000 - \$16,000,000	\$17,000,000

SIGNIFICANT ISSUES

Five NTPs – the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, and the Pueblos of Acoma and Pojoaque – signed the 2001 state-tribal gaming compact, which will expire on June 30, 2015. The Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, and the Pueblo of Acoma negotiated with the governor and agreed to the proposed 2015 compact. The Pueblo of Pojoaque dropped out of negotiations and the dispute is ongoing.

Facilities. Under the 2015 compact, the designation of legacy facilities, while it has geographic distance and machine count limits, does not address the concern of other NTPs that arose last year with the draft state-Navajo compact about casino location and competition. In the 2015 compact, NTPs can open additional casinos, if they have not met the maximum allowed under the proposed compact, without conditions for proximity to other gaming facilities or volume of class III machines.

Oversight/Financial Controls. The proposed compact excludes the State Treasurer from receiving financial statements and audit reports from gaming enterprises on an annual basis; therefore the State Treasurer has no document to verify revenue share payments received are accurate. In the proposed compact, it is not clear if the State Gaming Representative could share information with State Treasurer to reconcile revenue share payments to ensure compliance.

Non-Gaming Tribes. The 2015 compact prohibits class III gaming on lands that are deemed eligible for gaming but were acquired after October 17, 1988 and requires a tribe who desires to conduct class III gaming on such lands to negotiate a separate compact with the state. LFC staff is unclear whether this provision may conflict with the federal Indian Gaming Regulatory Act. The Indian Affairs Department offers the following commentary:

- Gaming also has a positive social impact on tribal entities. Studies show a large impact for tribes having gaming operations in comparison to tribes without gaming operations:
 - “It is also the case that Indian gaming was expected to generate positive social impacts, particularly on the lives of Native Americans. The National Indian Gaming Association (NIGA) reports that Indian Nations are funding a broad range of initiatives to strengthen tribal communities, including new health-care facilities, fitness centers, schools and day-care facilities, language immersion programs, and substance abuse programs (2006). These and other types of community investments were part of the vision guiding the IGRA as gaming nations would direct gaming dollars in concrete ways to address local social ills. Indirectly, the economic gains anticipated to accrue to community members would also function to improve the social conditions associated with living in chronic poverty.” (“The Impact of Gaming on the Indian Nations in New Mexico.” Thaddieus W. Conner, University of Oklahoma, William A. Taggart, New Mexico State University”.)
- Gaming can be beneficial for education. For tribal students preparing for college, living in a tribal community with gaming is associated with a greater ability to prepare for college. A study of New Mexico tribes found:
 - “Schools with students from gaming nations had an average SAT verbal score that was 46.86 points higher than schools with students from non-gaming nations, while the SAT math scores average a little more than 23 points higher. This is a very important difference between the two groups of schools because it demonstrates not only a difference in the K-12 experience of students, but also students’ intentions and preparation to pursue a college degree. “The Impact of Indian Gaming on Indian Education in New Mexico.” (<https://ipjournal.wordpress.com/2009/12/16/the-impact-of-indian-gaming-on-indian-education-in-new-mexico/>)

RELATIONSHIP

Section 13 of the General Appropriation Act contains seven appropriations from the general fund contingent on certification by the state gaming representative to the secretary of the department of finance and administration that a notice has been published in the federal register of the U.S. secretary of the interior’s approval or failure to act that is considered to be approval pursuant to 25 U.S.C. 2710 of a state-tribal class III gaming compact approved by the first session of the fifty-second Legislature.

Senate Bill 386 has an effective date of the new tax expenditures and the appropriation of the later of July 1, 2015, the date of certification described below, if that date falls on the first day of the month, by the state gaming representative to the Secretary of the Department of Finance and Administration, the Legislative Council Service, and the New Mexico Compilation Commission that publication or notice in the federal register has occurred of the Secretary of the Interior’s approval of, or of the secretary’s failure to act on, a tribal-state class III gaming compact approved by the first session of the fifty-second Legislature.

Senate Bill 706 allows licensed racetrack gaming operators and non-profit gaming operators to calculate net take so that promotional credit does not increase net take and amounts paid as a result of promotional credit reduces net take, deduct \$250 thousand from net take for comps, and deduct licensing fees from net take.

House Bill 22 would cap the percentage of tribal gaming revenue shared with the state under any new tribal gaming compacts at the corporate income tax rate.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The 2001 compact governing the Jicarilla Apache Nation, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Acoma, and the Pueblo of Pojoaque gaming activities expires June 30, 2015. Without a gaming compact with the state, these NTPs could lose their ability to operate class III gaming after this date. The consensus revenue estimate already considers the loss of the revenue sharing from these NTPs pursuant to the expiration of the 2001 compact.

POSSIBLE QUESTIONS

Can the State Gaming Representative share information with State Treasurer to reconcile revenue share payments without violating the confidentiality agreement?

ATTACHMENTS

Figure 1. New Mexico Tribal Net Win FY12-FY14

TRIBE/PUEBLO	FY 12	FY 13	FY 14
Jicarilla Apache Tribe	\$5,303,959	\$1,576,581	\$5,926,619
Mescalero Apache Tribe	\$69,877,141	\$69,765,041	\$66,725,308
Navajo Nation	\$81,286,408	\$82,091,124	\$84,270,987
Ohkay Owingeh	\$13,631,594	\$13,717,313	\$13,906,075
Pueblo of Acoma	\$21,855,699	\$21,806,368	\$20,912,251
Pueblo of Isleta	\$89,479,853	\$90,008,277	\$89,942,251
Pueblo of Laguna	\$95,707,696	\$95,591,891	\$92,111,732
Pueblo of Pojoaque	\$57,430,605	\$58,951,710	\$60,822,572
Pueblo of Sandia	\$178,471,000	\$177,392,866	\$170,899,712
Pueblo of San Felipe	\$19,179,158	\$18,938,618	\$17,657,221
Pueblo of Santa Ana	\$73,828,379	\$73,126,676	\$74,112,702
Pueblo of Santa Clara	\$23,131,186	\$23,555,270	\$24,012,546
Pueblo of Taos	\$8,654,948	\$8,522,584	\$8,054,322
Pueblo of Tesuque	\$21,906,593	\$22,254,065	\$21,587,876
Total FY Tribal Net Win	\$759,744,219	\$757,298,384	\$750,942,174

Source: Gaming Control Board

Figure 2. Estimated Net Win (Under the 2001 and 2007 Compacts)

	FY 2016 Est.	FY 2017 Est.	FY 2018 Est.	FY 2019 Est.
2001 Compact:				
Jicarilla	\$6,163,792	\$6,348,706	\$6,539,167	\$6,735,342
Mescalero	\$70,374,497	\$72,485,732	\$74,660,304	\$76,900,113
Navajo	\$90,146,560	\$92,850,957	\$95,636,486	\$98,505,581
Acoma	\$22,467,373	\$23,141,394	\$23,835,636	\$24,550,705
Pojoaque*	\$63,983,714	\$65,903,225	\$67,880,322	\$69,916,731
2007 Compact:				
Ohkay Owingeh	\$14,599,140	\$15,037,114	\$15,488,227	\$15,952,874
Isleta	\$96,425,404	\$99,318,166	\$102,297,711	\$105,366,642
Laguna	\$98,829,812	\$101,794,706	\$104,848,548	\$107,994,004
Sandia	\$182,753,028	\$188,235,619	\$193,882,687	\$199,699,168
San Felipe	\$19,124,203	\$19,697,929	\$20,288,867	\$20,897,533
Santa Ana	\$78,756,378	\$81,119,070	\$83,552,642	\$86,059,221
Santa Clara	\$25,302,063	\$26,061,125	\$26,842,959	\$27,648,247
Taos	\$8,503,682	\$8,758,792	\$9,021,556	\$9,292,203
Tesuque	\$23,098,489	\$23,791,444	\$24,505,187	\$25,240,343
Total	\$800,528,136	\$824,543,980	\$849,280,299	\$874,758,708
Total w/o Pojoaque	\$736,544,422	\$758,640,755	\$781,399,978	\$804,841,977

Source: LFC Staff

*Pojoaque has not agreed to the proposed 2015 compact

Figure 3. Estimated Adjusted Net Win (If All Gaming NTPs Sign 2015 Compact)

	FY 2016 Est.	FY 2017 Est.	FY 2018 Est.	FY 2019 Est.
2001 Compact:				
Jicarilla	\$6,257,030	\$6,438,671	\$6,643,435	\$6,858,204
Mescalero	\$70,392,735	\$72,500,697	\$74,685,821	\$76,944,225
Navajo	\$90,132,298	\$92,833,422	\$95,627,879	\$98,515,568
Acoma	\$22,560,611	\$23,231,359	\$23,939,904	\$24,673,568
Pojoaque*	\$64,001,951	\$65,918,190	\$67,905,840	\$69,960,844
2007 Compact:				
Ohkay Owingeh	\$14,588,752	\$15,022,781	\$15,481,232	\$15,957,298
Isleta	\$96,307,517	\$99,196,333	\$102,177,840	\$105,258,192
Laguna	\$98,711,925	\$101,672,873	\$104,728,677	\$107,885,553
Sandia	\$182,635,141	\$188,113,786	\$193,762,817	\$199,590,717
San Felipe	\$19,113,816	\$19,683,596	\$20,281,871	\$20,901,957
Santa Ana	\$78,670,991	\$80,997,237	\$83,432,771	\$85,950,770
Santa Clara	\$25,291,676	\$26,046,792	\$26,835,963	\$27,652,672
Taos	\$8,493,295	\$8,744,460	\$9,014,561	\$9,296,627
Tesuque	\$23,088,102	\$23,777,111	\$24,498,192	\$25,244,767
Free Play Adjustment	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)
Total	\$795,245,838	\$819,177,308	\$844,016,803	\$869,690,964
Total w/o Pojoaque	\$731,243,887	\$753,259,118	\$776,110,963	\$799,730,120

Source: LFC Staff

*Pojoaque has not agreed to the proposed 2015 compact

Figure 4. Difference Between Estimated Adjusted Net Win (Figure 3) and Net Win (Figure 2)

	FY 2016 Est.	FY 2017 Est.	FY 2018 Est.	FY 2019 Est.
2001 Compact:				
Jicarilla	\$93,238	\$89,965	\$104,268	\$122,862
Mescalero	\$18,238	\$14,965	\$25,518	\$44,112
Navajo	(\$14,262)	(\$17,535)	(\$8,607)	\$9,987
Acoma	\$93,238	\$89,965	\$104,268	\$122,862
Pojoaque*	\$18,238	\$14,965	\$25,518	\$44,112
2007 Compact:				
Ohkay Owingeh	(\$10,387)	(\$14,333)	(\$6,996)	\$4,424
Isleta	(\$117,887)	(\$121,833)	(\$119,871)	(\$108,451)
Laguna	(\$117,887)	(\$121,833)	(\$119,871)	(\$108,451)
Sandia	(\$117,887)	(\$121,833)	(\$119,871)	(\$108,451)
San Felipe	(\$10,387)	(\$14,333)	(\$6,996)	\$4,424
Santa Ana	(\$85,387)	(\$121,833)	(\$119,871)	(\$108,451)
Santa Clara	(\$10,387)	(\$14,333)	(\$6,996)	\$4,424
Taos	(\$10,387)	(\$14,333)	(\$6,996)	\$4,424
Tesuque	(\$10,387)	(\$14,333)	(\$6,996)	\$4,424
Free Play Adjustment	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)	(\$5,000,000)
Total	(\$5,282,297)	(\$5,366,672)	(\$5,263,497)	(\$5,067,745)
Total w/o Pojoaque	(\$5,300,535)	(\$5,381,637)	(\$5,289,015)	(\$5,111,857)

Source: LFC Staff

*Pojoaque has not agreed to the proposed 2015 compact

Figure 5. Estimated Revenue Sharing (If All NTPs Sign 2015 Compact)

	FY 2016 Est.	FY 2017 Est.	FY 2018 Est.	FY 2019 Est.
2001 Compact:				
Jicarilla	\$141,848	\$157,287	\$174,692	\$195,093
Mescalero	\$6,335,346	\$6,525,063	\$6,721,724	\$7,309,701
Navajo	\$8,111,907	\$8,355,008	\$8,606,509	\$9,851,557
Acoma	\$1,917,652	\$1,974,666	\$2,034,892	\$2,158,937
Pojoaque*	\$5,760,176	\$5,932,637	\$6,111,526	\$6,646,280
Total	\$22,266,928	\$22,944,660	\$23,649,342	\$26,161,568
2007 Compact:				
Ohkay Owingeh	\$850,044	\$886,936	\$925,905	\$991,264
Isleta	\$8,667,676	\$8,927,670	\$9,196,006	\$10,525,819
Laguna	\$8,884,073	\$9,150,559	\$9,425,581	\$10,788,555
Sandia	\$16,437,163	\$16,930,241	\$17,438,654	\$19,959,072
San Felipe	\$1,234,674	\$1,283,106	\$1,723,959	\$1,828,921
Santa Ana	\$7,080,389	\$7,289,751	\$7,508,949	\$8,595,077
Santa Clara	\$2,149,792	\$2,213,977	\$2,281,057	\$2,419,609
Taos	\$331,930	\$353,279	\$376,238	\$408,455
Tesuque	\$1,962,489	\$2,021,054	\$2,082,346	\$2,208,917
Total	\$47,598,231	\$49,056,573	\$50,958,694	\$57,725,689
Free Play Adjustment	(\$436,523)	(\$436,807)	(\$439,379)	(\$479,525)
Est. Revenue Sharing with 2015 Compact	\$69,428,636	\$71,564,427	\$74,168,657	\$83,407,732
February 2015 Consensus Revenue Estimate	\$53,300,000	\$56,200,000	\$58,400,000	\$60,500,000
Estimated Revenue Impact	\$16,128,636	\$15,364,427	\$15,768,657	\$22,907,732
Estimated Revenue Impact w/o Pojoaque	\$10,368,460	\$9,431,790	\$9,657,132	\$16,261,452

Source: LFC Staff

*Pojoaque has not agreed to the proposed 2015 compact

Figure 6. Revenue Sharing Percentages by Compact

2001 Compact

Annual Net Win (July 1 - June 30)	2001-2015
Under \$12 million:	3% of the first \$4 million, and 8.00% on the rest
Over \$12 million:	8.00%

2007 Compact

Annual Net Win (July 1 - June 30)	2007 - 2015	2015 - 2030	2030 - 2037
Under \$15 million:	3% of the first \$5 million, and 9.25% on the rest	3% of the first \$5 million, and 9.50% on the rest	3% of the first \$5 million, and 10.25% on the rest
\$15 - \$50 million:	9.25%	9.50%	10.25%
More than \$50 million:	9.75%	10.00%	10.75%

Proposed 2015 Compact

Annual Adjusted Net Win	July 1, 2015 - June 30, 2018	July 1, 2018 - June 30, 2030	July 1, 2030 - June 30, 2037
Under \$20 million:	2% of the first \$6 million, and 8.5% on the rest	3% of the first \$6 million, and 9.50% on the rest	3% of the first \$6 million, and 10.25% on the rest
\$20 - \$40 million:	8.50%	8.75%	9.50%
\$40 - \$80 million:	9.00%	9.50%	10.25%
More than \$80 million:	9.00%	10.00%	10.75%

CE/je/bb/je